

REMARKS

Claims 1 - 30 were pending in the application. Claims 1, 14, and 15 have been amended. Accordingly, claims 1-30 remain pending in the application.

35 U.S.C. § 103 Rejections

1. Claims 1-7, 15-16, 18-21, 23, and 27 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chih-Lui I (U.S. Patent # 6,088,335) in view of Shah et al. (U.S. Patent # 5,410, 536).

Applicant notes that to establish a prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03.

Applicant respectfully submits that Chih-Lui I and Shah, whether alone or combined, fail to teach or suggest “wherein, **in response to said first device re-conveying said first request in excess of a retry limit**, said first device and said second device are configured **to cause an error recovery mechanism to be initiated**” as recited by claim 1.

The Examiner contends that these features are taught in column 19, lines 50-63 of Shah. Applicant notes that Shah teaches, “Error recovery is symmetrical for both nodes. When an error occurs both nodes **will enter the ‘check’ state and invoke the Link ERP.**” (Column 18, Lines 64-66) (Emphasis added) Also, Shah teaches, in column 19, lines 17-63:

The first (or only) node that detects the error enters the ‘check’ state and invokes its Link ERP, **The Link ERP functions** as follows:

1. **The ERP waits until the transmitter has finished sending the current packet, if any.**
2. The ERP then builds the Link Status Byte by reference to the hardware.

3. If the line driver or receiver have detected a line fault then the ERP tries to reset the error. If this fails then the application is alerted via an ERP exit ('Permanent line fault').

8. The implementation must protect against the ERP looping if there is a permanent error. Since both nodes are always involved in error recovery it is sufficient if only one node provides this protection, eg, the upper node in a hierarchical system. The following is an example of one method that can be used. Each invocation of the ERP increments a retry counter that is reset to zero periodically by a timer. If the number of retries in one period of the timer exceeds some maximum value then the ERP waits 10 ms to ensure the remote node recognises that retry is being aborted. The application is then alerted via an ERP exit ('Retry limit exceeded'). This scheme also protects against excessive use of the ERP in the event of severe external noise. (Emphasis added)

Applicant notes that the method of Shah cited by the examiner prevents the Error Recovery Procedure (ERP) from looping and prevents excessive use of the ERP. Each invocation of the ERP increments a retry counter, and if the number of retries in one period of the timer exceeds a maximum value, the operation is aborted via an ERP exit. However, Chih-Lui I and Shah, whether alone or combined, fail to teach or suggest “in response to said first device re-conveying said first request in excess of a retry limit, said first device and said second device are configured to cause an error recovery mechanism to be initiated” as recited by claim 1.

Furthermore, Applicant submits that none of the cited art presents or suggests a motivation to combine, and that the Examiner has simply attempted to construct the features and limitations of Applicant's invention as claimed by joining individual features described in the cited references with no motivation to combine provided other than the Examiner's observation that an improved system would result, which is clearly hindsight analysis.

In accordance, claim 1 is believed to patentably distinguish over Chih-Lui I and Shah, whether alone or combined. Claims 2-7, 21, 23, and 27 depend on claim 1 and are therefore believed to patentably distinguish over Chih-Lui I and Shah, whether alone or combined, for at least the reasons given above.

With regard to claim 4, Applicant respectfully submits that Chih-Lui I fails to teach or suggest “wherein said delay value corresponds to a first value in response to said temporarily unavailable condition corresponding to a first type of condition and wherein said delay value corresponds to a second value in response to said temporarily unavailable condition corresponding to a second type of condition.” The Examiner contends that this feature is taught in column 9 line 45 - column 10 line 24 of Chih-Lui I (i.e., “basic rate” and “high rate”). Chih-Lui I teaches that mobiles are permitted to access base stations at a basic rate or a high rate. (Chih-Lui I, Column 9 Lines 52-60 and Column 10 Lines 5-12) However, Chih-Lui I fails to teach or suggest the features of claim 4 highlighted above. In accordance, claim 4 is believed to patentably distinguish over Chih-Lui I and Shah, whether alone or combined.

In addition, Applicant respectfully submits that Chih-Lui I and Shah, whether alone or combined, fail to teach or suggest **“in response to said first device re-conveying said first request to the second device in excess of a retry limit, initiating an error recovery mechanism”** as recited by claim 15. Claim 15 recites features similar to those highlighted above with regard to claim 1 and is therefore believed to patentably distinguish over Chih-Lui I and Shah, whether alone or combined, for at least the reasons given in the above paragraphs discussing claim 1. Claims 16 and 18-20 depend on claim 15 and are therefore believed to patentably distinguish over Chih-Lui I and Shah, whether alone or combined, for the same reasons.

2. Claims 8-9, 12-13, and 30 were rejected under 35 U.S.C. 103(a) as being unpatentable over Chih-Lui I in view of Bailey et al. (U.S. Patent # 5,189, 734). Applicant respectfully traverses this rejection.

Applicant notes that to establish a prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03.

Applicant respectfully submits that Chih-Lui I and Bailey, whether alone or combined, fail to teach or suggest “wherein said second device is configured to store historical data corresponding to previous temporarily unavailable conditions, wherein said second device is configured to determine said delay value based on the stored historical data” as recited by claim 8.

The Examiner contends that these features are taught in column 6, lines 1-25 of Bailey. Bailey teaches, in column 6, lines 1-25:

Base stations can monitor handover traffic from adjacent cells to collate a statistical data base of handover traffic flow to and from adjacent cells and user's mobility habits. With this knowledge, the base station can estimate the proportion of users likely to require handover from particular neighbours and the likely delay before the associated handover request is made. Using such information the base station can maintain and modify a pool of channels which are reserved against allocation to new calls in order that the system can cope with existing calls which it is anticipated will be transferred from one cell to the next. The network controller or base station can warn current users of an impending loss of service due to adjacent cells being full, cells which are temporarily out of use due to a fault in a base station or there are no adjacent cells in the estimated direction of travel. In the event of a base station failing, then those calls which have channels already reserved for their use in adjacent cells may have some chance of being recovered and continued. The call history in a call data packet will allow the network controller or base station to note a user moving rapidly through a succession of cells and if necessary to adjust the processing priorities. (Emphasis added)

Applicant notes that Bailey teaches a “call history in a call data packet” that allows a “base station to note a user moving rapidly through a succession of cells and if necessary to adjust the processing priorities”. The Examiner contends that “Bailey’s error log would provide information to determine the delay and can be reused later when the same error repeats”. Applicant submits that the “call history” of Bailey is a call log or data in a data packet indicating the history of the calls corresponding to the particular data packet. The “call history” of Bailey is not an error log. Also, in Bailey, base stations monitor handover traffic flows and user’s mobility habits, which may be used to determine “the likely delay before the associated handover request is made”. However, Applicant respectfully submits that Bailey fails to teach or suggest, “said second device is

configured to store historical data **corresponding to previous temporarily unavailable conditions**, wherein said second device is configured to **determine said delay value based on the stored historical data**” as recited by claim 8.

Furthermore, Applicant submits that none of the cited art presents or suggests a motivation to combine, and that the Examiner has simply attempted to construct the features and limitations of Applicant’s invention as claimed by joining individual features described in the cited references with no motivation to combine provided other than the Examiner’s observation that an improved system would result, which is clearly hindsight analysis.

In accordance, claim 8 is believed to patentably distinguish over Chih-Lui I and Bailey, whether alone or combined. Claims 9 and 12-13 depend on claim 8 and are therefore believed to patentably distinguish over Chih-Lui I and Bailey, whether alone or combined, for at least the same reasons.

Additionally, Applicant respectfully submits that Chih-Lui I and Bailey, whether alone or combined, fail to teach or suggest “wherein a delay value is associated with **each** of the plurality of temporarily unavailable conditions and **each** delay value is a **programmable value**; wherein said second device is configured to convey a response to said first device including the delay value associated with a detected one of the plurality of temporarily unavailable conditions at the second device” as recited by claim 30. The Examiner contends that these features are taught in column 6 lines 1-25 of Bailey. In column 6, lines 1-25, Bailey teaches base stations monitoring handover traffic flows and user’s mobility habits, which may be used to determine “the likely delay before the associated handover request is made”. However, Bailey fails to teach or suggest “a delay value is associated with **each** of the plurality of temporarily unavailable conditions” and “said second device is configured to convey a response to said first device including the delay value associated with a detected one of the plurality of temporarily unavailable conditions at the second device”. In accordance, claim 30 is believed to patentably distinguish over Chih-Lui I and Bailey, whether alone or combined.

3. Claims 10 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chih-Lui I in view of Bailey, and further in view of Chambers. Claim 14 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chih-Lui I in view of Bailey, and further in view of Shah. Claims 17, 22, 24-26, and 28 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Chih-Lui I in view of Shah, and further in view of Bailey. Claim 29 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Chih-Lui I in view of Shah, and further in view of Barlow. Claims 22, 24-26, and 28-29 are dependent upon claim 1, claims 10, 11, and 14 are dependent upon claim 8, and claim 17 is dependent upon claim 15, and are therefore believed to patentably distinguish over the cited references, whether alone or combined, for at least the reasons given in the above paragraphs discussing claims 1, 8, and 15.

With regard to claim 22, Applicant respectfully submits that Chih-Lui I, Shah, and Bailey, whether alone or combined, fail to teach or suggest “said second device is configured to generate said delay value based on a number of **outstanding** responses corresponding to the temporarily unavailable condition”. In accordance, claim 22 is believed to patentably distinguish over Chih-Lui I, Shah, and Bailey, whether alone or combined.

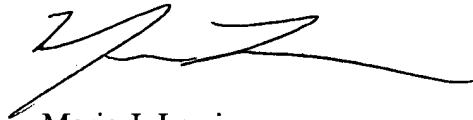
CONCLUSION

In light of the foregoing amendments and remarks, Applicant submits that all pending claims are now in condition for allowance, and an early notice to that effect is earnestly solicited.

If a phone interview would speed allowance of any pending claims, such is requested at the Examiner's convenience.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-38400/BNK.

Respectfully submitted,



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